IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2634 OF 2003
IN
SUIT NO.3099 OF 1999

S.S. Jhuria & Ors. ....Plaintiffs
V/s.
State of Maharashtra & Ors. ....Defendants
And
The Executive Engineer & Ors. ....Respondents

Mr.S.F. Rego i/b Bhaishankar Kanga for the Plaintiffs.
Mr.Milind More, A.G.P. for the State - Defendant Nos.1 and 2.
Mr.R.Y. Sirsikar for B.M.C.

CORAM : S.J. VAZIFDAR, J.
DATED : 2ND DECEMBER, 2005.

P.C. :

1. By this Notice of Motion, the Plaintiff seeks an order restraining Defendant Nos.3 to 8 from assessing the suit property as non-residential property. The Plaintiffs have also sought a declaration for refund of the moneys collected by Defendant Nos.3 to 8 on the basis of assessing the entire suit property as non-residential. The Plaintiffs have also sought certain consequential reliefs. The Plaintiffs' grievance is that from 1974 to 1996 Defendant No.4 i.e. the Bombay Municipal Corporation wrongly assessed the property as non-residential and submitted that the amount ought to

be refunded to the Plaintiffs.

2. It is not possible to grant this relief to the Plaintiffs at this stage. The question whether the assessment during the period 1974 to 1996 were wrong or not, must be decided finally in any appropriate proceedings.

3. It was also submitted that after 1996, the property has been assessed partly as residential property and partly as non-residential property. It is important to note that it is admitted that a part of the property is being used for non-residential i.e. for commercial purpose. The Plaintiffs were unable to state the proportion of the property being used for each of the said properties. In the circumstances, even assuming that this Notice of Motion is appropriate proceeding, it is not possible to grant the Plaintiffs such relief.

4. The Plaintiffs are at liberty to adopt appropriate proceedings in respect of the grievance regarding assessment in respect of the said property. If such proceedings are adopted, pendency of the suit shall not be a bar against the same being considered.

5. The Notice of Motion is accordingly disposed of.